



Division of  
Enforcement

## COMMODITY FUTURES TRADING COMMISSION

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May 1, 2018

### **BY ECF**

Chief Magistrate Judge Roanne L. Mann  
United States District Court  
Eastern District of New York  
225 Cadman Plaza East  
New York, New York 11201

**Re: *Commodity Futures Trading Commission v. Patrick K. McDonnell and CabbageTech, Corp. d/b/a Coin Drop Markets*, No. 18-CV-00361 (JBW)(RLM)**

Dear Chief Magistrate Judge Mann:

I am a Senior Trial Attorney in the Division of Enforcement of the Commodity Futures Trading Commission (the “Commission”) and represent the Commission in the captioned matter. Last night, we learned that Defendant McDonnell filed a voluntary bankruptcy petition last Friday. *In re McDonnell*, 18-bk-42427 (Bankr. E.D.N.Y.) (petition filed Apr. 27, 2018).

This afternoon, Mr. McDonnell indicated to our office via email that he believes the Bankruptcy Code’s automatic stay applies to this action, presumably staying all proceedings and discovery. We noted that the automatic stay for bankruptcy proceedings does not apply to this action. In particular, the law specifically excludes from the automatic stay certain matters, including an action by a federal agency like the CFTC enforcing its regulatory powers:

The filing of a petition under section 301 [voluntary petitions], 302 [voluntary petitions for joint cases], or 303 [involuntary petitions] of this title . . . does not operate as a stay—

(4) under paragraph (1), (2), (3), or (6) of subsection (a) of this section, of the commencement or continuation of an action or proceeding by a governmental unit . . . to enforce such governmental unit’s or organization’s police and regulatory power, including the enforcement of a judgment other than a money judgment, obtained in an action or proceeding by the governmental unit to enforce such governmental unit’s or organization’s police or regulatory power.

11 U.S.C. § 362(b)(4); *see also CFTC v. Incomco, Inc.*, 649 F.2d 128, 133 (2d Cir. 1981) (“The commencement or continuation of actions brought by governmental agencies to enforce regulatory or police powers is specifically exempted from the automatic stay provisions . . .”).

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In light of tomorrow's scheduled settlement conference before Your Honor, we asked Mr. McDonnell whether he would attend; in response, he stated that he "will confirm that with the Court not a violator of Federal Bankruptcy Rules and Procedures."

We remain available for tomorrow's settlement conference to address this or any other issues, and plan to attend unless otherwise directed.

Respectfully submitted,

/s/ David W. Oakland

David W. Oakland

cc: Patrick K. McDonnell (by ECF and electronic mail)  
Judge Jack B. Weinstein (by ECF)